

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
November 7, 2001 Session

**STATE OF TENNESSEE v. BRIAN MATHIS**

**Direct Appeal from the Circuit Court for Lauderdale County  
No. 7039     Joseph H. Walker, Judge**

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**No. W2001-00795-CCA-R3-CD - Filed January 10, 2002**

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Following a bench trial in the General Sessions Court of Lauderdale County, the defendant, Brian Mathis, was found guilty of Class A misdemeanor assault, Tenn. Code Ann. § 39-13-101. He appealed to the Lauderdale County Circuit Court. Defendant was again convicted of misdemeanor assault after a bench trial. The Circuit Court then ordered Defendant to serve eleven months, twenty-nine days, with the sentence suspended upon service of ten days and the remaining time to be served on supervised probation. On appeal to this Court, Defendant challenges his conviction and raises the following issues: (1) whether his use of force against the victim was justified on the ground of self-defense, and (2) whether the State presented sufficient proof to negate his claim of self-defense beyond a reasonable doubt. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed.**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and JOE G. RILEY, J., joined.

Gary F. Antrican, District Public Defender; and David S. Stockton, Assistant Public Defender, Covington, Tennessee, for the appellant, Brian Mathis.

Paul G. Summers, Attorney General and Reporter; Kim R. Helper, Assistant Attorney General; Elizabeth T. Rice, District Attorney General; and Tracey Brewer, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual Background**

On August 28, 2000, Defendant and Mark Mason became involved in an altercation during which Mason was stabbed four times and Defendant received a wound to his hand. Mason pled guilty to assault. Defendant opted for a bench trial, after which he was found guilty of misdemeanor assault and now appeals his conviction.

The circumstances leading to Defendant's conviction began on August 28, 2000. Mason, the victim (whose guilty plea for participation in the incident resulted in a similar conviction for assault), was traveling alone in his vehicle on Highway 87 when he observed Defendant and two other men standing beside a guardrail on the side of the road. As Mason neared the three men, Defendant called out to him and stepped onto the roadway, making motions as though he wanted Mason to stop. Mason stopped, backed up his vehicle, and a verbal exchange between the two men began. After a few minutes, Mason parked, exited his vehicle and approached Defendant. The verbal altercation between the two men continued. Mason removed a pocket knife from his pocket and, shortly thereafter, he and Defendant were wrestling on the ground. During the scuffle, Mason sustained a total of four wounds--a cut on the leg, a cut on the stomach, and one cut each on the front and back of his shoulder. He was subsequently transported to "the Med" by helicopter, where he underwent an operation and remained hospitalized for ten days. Defendant sustained injuries to his right palm and forefinger. Defendant's two companions merely observed the confrontation and did not become involved verbally or physically.

According to the testimony from Mason at Defendant's trial, Defendant "flagged him down" from the side of the highway as Mason approached them in his vehicle. When Mason stopped, Defendant demanded to know why he "was coming out of [Defendant's] driveway." Mason denied doing so. Defendant repeated his accusation, and Mason repeated his denial. The quarrel went on for some time. Mason testified that Defendant appeared to get angrier as they argued--he began waving his hands in the air and "throwing gang signs" with his fingers. At this point, Mason began to get angry also. He got out of his vehicle and approached Defendant. Mason had a pocket knife in his pocket, unbeknownst to Defendant. Mason was unsure whether Defendant had a weapon of any kind. As the argument between the men continued, Mason pulled out his knife, and the two men began to wrestle over possession of it. During the struggle, they fell to the ground and the knife was knocked from Mason's hand. Defendant gained possession of it and began to stab Mason.

During cross-examination, Mason testified that nothing obstructed the path of his vehicle or otherwise prevented him from continuing down the highway when Defendant called out to him. Mason claimed that he was not angry when he initially stopped; he merely wanted to know for what reason Defendant had flagged him down. When asked why he did not drive away when it became apparent that Defendant was angry, Mason replied, "I wasn't going to give him a chance to reach in the car at me while I'm trying to leave." In addition, Mason claimed that he "wanted to let [Defendant] know that he didn't come out of the driveway." Mason testified that he and Defendant started physically pushing each other during the argument, but he did not recall who pushed first. In Mason's opinion, however, Defendant "started it" by stopping him to inquire about his driveway.

Mason testified that he liked to hunt and fish and, therefore, it was not unusual for him to carry a pocket knife. He also claimed that he did not threaten Defendant with the knife, but pulled it out only to defend himself in the event Defendant had a weapon of some kind, even though he did not observe any weapon during the skirmish, other than his own. Mason testified that he "backed away" when he realized Defendant had gained possession of his knife. He then tried to get to his vehicle, which was parked approximately fifteen paces from where the men were fighting. Mason testified that he had to pass Defendant to access his vehicle and that Defendant did not move to allow

him to do so. When asked whether he ever “broke off the attack” or said “I quit,” or words to that effect, Mason replied that he did not because Defendant “was still coming to [him] with the knife.” He testified that Defendant followed him to his vehicle but did not stab him as he tried to leave. Mason claimed that he never tried to injure Defendant. At the time the men were fighting, Mason was unaware Defendant’s hand was cut. Mason also admitted that he drank “a beer” prior to his confrontation with Defendant.

Sergeant Dennis Gardner, with the Henning Police Department, testified at trial that he participated in the investigation of the stabbings. On September 15, 2000, Defendant voluntarily gave the police the following written statement:

I, Brian Mathis, was crossing East McFarlin when Mr. Mason was driving through. When I was in the street, he proceeded to speed up and almost hit me. I screamed “slow the f--- down.” Mr. Mason then stopped and backed up. During this time, I was sitting on the railing. We proceeded to argue. I asked Mr. Mason to leave me alone and go about his business. At that time, he swepted [sic] me off of my feet and put his knife to my throat. He told me he was going to kill me. We began fighting for the knife which he then dropped. I picked up the knife and began to sling at Mr. Mason. After I saw the blood on his shirt, I said, “You need to go on. I already got you once.” Mr. Mason looked down at his shirt, got back in his car. As he was driving away, I threw the knife at his car.

Tracy Rucker, one of the two men standing with Defendant on the road and present during the altercation, was a relative of Mason’s--the men are cousins. According to Rucker’s testimony at trial, Defendant was sharing a quart of beer with another man when Rucker arrived at the guard rail on August 28, 2000. (The third man was unavailable to testify at trial.) Rucker testified that Defendant believed Mason was driving too fast when they observed him driving down the highway. Consequently, Defendant walked onto the road and motioned for Mason to slow down. Mason slowed down, backed up, and then he and Defendant “had a few words.” Mason got out of his vehicle and approached Defendant. Shortly thereafter, they were scuffling on the ground. Mason had a knife, and Rucker heard him threaten Defendant, saying “You don’t know me. I’ll kill you.” Mason was on top of Defendant with the knife to his throat when he said this.

Rucker further testified that, somehow, the knife was then wrestled away from Defendant’s neck and the men resumed their scuffle on the ground. At some subsequent point, Rucker noticed that Mason had dropped the knife and received a stab wound. When the men got up off of the ground, Defendant had the knife in his hand and moved backward. Mason was advancing on Defendant, attempting to knock the knife from Defendant’s hand with his hat. Rucker grabbed Defendant from behind and told Mason, “You go on and get in the car and go on.” Mason walked back to his car. Defendant threw the knife at Mason’s vehicle as he drove away. Rucker testified that, in his opinion, neither man backed off or “quit” fighting at any point during the episode.

At the conclusion of the bench trial, the trial judge found Defendant guilty of misdemeanor assault beyond a reasonable doubt and further that (1) Defendant recklessly caused bodily injury to

the victim, Mason; (2) Defendant caused serious bodily injuries which exceeded the force necessary to protect against Mason's aggressive use of force when he repeatedly cut Mason; and (3), considering all of the facts and circumstances surrounding and leading up to the assault, Defendant's use of force was not reasonable.

### **Analysis**

Defendant contends that his use of force against Mason was justified by self-defense, as provided in Tennessee Code Annotated section 39-11-611, and that the State failed to present sufficient proof to negate this claim beyond a reasonable doubt. For the reasons following, we disagree.

According to Tennessee Code Annotated section 39-13-101, a person commits Class A misdemeanor assault who "intentionally, knowingly or recklessly causes bodily injury to another," or "intentionally or knowingly causes another to reasonably fear imminent bodily injury." See Tenn. Code Ann. § 39-11-101(a)(1), (2) (1997). With regard to self-defense, Tennessee Code Annotated section 39-11-611 provides the following:

[a] person is justified in threatening or using force against another person when and to the degree the person reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force. The person must have a reasonable belief that there is an imminent danger of death or serious bodily injury. The danger creating the belief of imminent death or serious bodily injury must be real, or honestly believed to be real at the time, and must be founded upon reasonable grounds. There is no duty to retreat before a person threatens or uses force.

Tenn. Code Ann. § 39-11-611(a) (1997). When evidence is introduced which supports a defendant's claim of self-defense, the burden is on the state to prove beyond a reasonable doubt that the defendant did *not* act in self-defense. See Tenn. Code Ann. § 39-11-201(a)(3) (1997); State v. Belser, 945 S.W.2d 776, 782 (Tenn. Crim. App. 1996).

In his brief, Defendant argues that the facts justifying his claim of self-defense were sufficiently proven at trial. First, Defendant submits that Mason's guilty plea for the offense of assault against Defendant, when considered with the injury sustained on Defendant's palm and finger and the relentlessness of Mason's attack, prove that Defendant's belief of an imminent danger of death or serious bodily injury was reasonable. Defendant also asserts that the evidence showed he was unarmed. He argues that Mason brandished a knife, and the two men grappled on the ground for possession of the weapon. Based on these circumstances, Defendant submits that the second requirement, which calls for proof that the danger creating the belief of imminent death or serious bodily injury be real or that one could honestly believe it to be real at the time, was also proved.

Thus far, we agree with Defendant that Mason's guilty plea to the assault charges and his production of a potentially deadly weapon, when considered in light of his threat against Defendant,

who was initially unarmed, allow certain inferences. Specifically, we can logically deduce that (1) Defendant's belief in the threat of imminent loss of life or serious bodily injury was reasonable, (2) the danger creating the belief was real or honestly believed to be real at the time, and (3) this belief was also founded upon reasonable grounds. See Tenn. Code Ann. § 39-11-611, Sentencing Commission Comments (stating the three-fold test for "reasonable belief," which must be satisfied prior to allowing justification of self-defense for use of force). Thus, evidence was introduced to support Defendant's theory of self-defense. The burden was then on the State to prove beyond a reasonable doubt that the defendant did *not* act in self-defense.

When an accused challenges the sufficiency of the convicting evidence, we must review the evidence in the light most favorable to the prosecution in determining whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). This Court does not reweigh or re-evaluate the evidence, and we are required to afford the State the strongest legitimate view of the proof contained in the record, as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1979). Furthermore, we note that the findings of a trial judge in a bench trial carry the same weight as a jury verdict. State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978); State v. Holder, 15 S.W.3d 905, 911 (Tenn. Crim. App. 1999).

Consistent with common law, the statute concerning self-defense, Tennessee Code Annotated section 39-11-611, only permits a person to use the force reasonably necessary to protect himself/herself. See Tenn. Code Ann. § 39-11-611, Sentencing Commission Comments; Long v. State, 443 S.W.2d 476, 479 (Tenn. 1969). As a result, the defense is not available to a defendant who uses excessive force. Id.

We agree with the trial court that, when Defendant repeatedly cut Mason, he caused serious bodily injuries which exceeded the force necessary to protect himself. Considering all of the facts and circumstances surrounding and leading up to the assault, Defendant's use of force was not reasonable. Significantly, we note that after Defendant wrested control of the knife away from Mason, he stabbed Mason four times. We believe the proof showed that this was excessive under the circumstances. Defendant received only a cut to his hand.

Whether or not a defendant acted in self-defense is a question for the trier of fact to determine. See Arterburn v. State, 391 S.W.2d 648, 653 (Tenn. 1965); State v. Fugate, 776 S.W.2d 541, 545 (Tenn. Crim. App. 1988). Encompassed within that determination is whether the defendant's belief in imminent danger was reasonable, whether the force used was reasonable, and whether the defendant was without fault. State v. Renner, 912 S.W.2d 701, 704 (Tenn. 1995).

Prior to rendering the verdict in Defendant's case, the trial court heard testimony from Mason, who pled guilty to assault, and Rucker, an eyewitness to the altercation. Notwithstanding Mason's admission and Rucker's testimony regarding the threat made to Defendant, the trial court specifically found that Defendant's actions exceeded the force necessary to protect himself against Mason's use of force. The trial court stated that it considered all of the facts and circumstances surrounding and leading up to Defendant's assault. The issue of excessive force is a determination

within the purview of the trier of fact. As stated above, the appellate court cannot reweigh or reevaluate the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1979).

Defendant contends that his use of force was also “lawful and necessary” under the “true man” doctrine, adopted and followed in Tennessee. Under this doctrine, “one need not retreat from the threatened attack of another even though one may safely do so. Neither must one pause and consider whether a reasonable person might think it possible to safely flee rather than to attack and disable or kill the assailant.” State v. Renner, 912 S.W.2d 701, 704 (Tenn. 1995) (citing Brown v. United States, 256 U.S. 335, 41 S.Ct. 501, 65 L.Ed. 961 (1921)). This doctrine applies only when the defendant is without fault in provoking the confrontation, in a place where he or she has a lawful right to be, and is there placed in reasonably apparent danger of imminent bodily harm or death. Renner, 912 S.W.2d at 704. As in all cases of self-defense, however, the force used must be considered reasonable in view of all of the circumstances and, as especially relevant here, “the ‘true man’ rule implies *no license* for the initiation of a confrontation *or an unreasonable escalation of a confrontation in progress*.” Id. (emphasis added).

Whether the “true man” rule applies in a particular case is a matter to be determined by the trier of fact. Id. Since we agree with the trial judge’s determination that sufficient proof existed to show that the force used exceeded that which was reasonable under the circumstances, and the “true man” doctrine does not imply license “for an unreasonable escalation of a confrontation in progress,” Defendant is not entitled to relief under this theory.

Finally, Defendant contends that “the court erred in imposing a requirement, contrary to law, that a defendant must refrain from *recklessly* causing bodily injury to an attacker where the defendant is justified in self-defense.” In his brief, Defendant emphasized the word “reckless,” arguing that the trial court held that “one who is in reasonable apparent danger of imminent bodily harm or death may not act recklessly.” Specifically, Defendant submits that the trial court found him reckless and, therefore, guilty because “he did not pause and consider whether he could flee in safety rather than attack and kill his assailant.”

Defendant misinterpreted the findings of the trial court. Our review of the record reflects that the trial court used the word “recklessly” in the context of stating its conclusion, to wit: the court stated that Defendant was “guilty of assault beyond a reasonable doubt, in that he recklessly caused bodily injury to Mason . . . .” The word “recklessly” is contained in the statutory language pertaining to the crime for which Defendant was found guilty, and the trial court’s reiteration of the language was entirely appropriate. See Tenn. Code Ann. § 39-13-101(a)(1) (1997) ( “a person commits assault who “intentionally, knowingly, or *recklessly* causes bodily injury to another” (emphasis added)). Because the record reveals no basis for Defendant’s contentions that the trial court was imposing requirements contrary to law, Defendant is not entitled to relief on this issue.

### **Conclusion**

For the forgoing reasons, the judgment of the circuit court is AFFIRMED.

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THOMAS T. WOODALL, JUDGE